

FILED

JAN 07 2021

UNITED STATES DISTRICT COURT U.S. DISTRICT COURT-WVN
for the CLARKSBURG, WV 26301

KENIA TYRONE HUNTER
Petitioner

V.

Case No.

5:21cv4
(Supervised by Clerk of Court)

(Supplied by Clerk of Court)

Bailey
Mazzone
Block

Richard Hudgins

Respondent

(name of warden or authorized person having custody of petitioner)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: KEWIA TYRONE HUNTER
 (b) Other names you have used: KEWAI TYRONE HUNTER, "WAX", KEMAKO EMORY

2. Place of confinement:
 (a) Name of institution: UNITED STATES PENITENTIARY-HAZELTON
 (b) Address: P.O. BOX 2000, Bruceton Mills, WV 26525

3. (c) Your identification number: 65757-061
 Are you currently being held on orders by:
 Federal authorities State authorities Other - explain:

4. Are you currently:
 A pretrial detainee (waiting for trial on criminal charges)
 Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
 If you are currently serving a sentence, provide:
 (a) Name and location of court that sentenced you: 6th District of OHIO,
Southern District, Columbus OHIO
 (b) Docket number of criminal case: 2:02-cr-00084-1, 2:03-cr-00007
 (c) Date of sentencing: 10-30-02, 10-16-20

Being held on an immigration charge
 Other (explain): Revocation

Decision or Action You Are Challenging

5. What are you challenging in this petition:
 How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

Pretrial detention
 Immigration detention
 Detainer
 The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
 Disciplinary proceedings
 Other (explain): _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: 6th District federal court of southern Ohio, columbus ohio

(b) Docket number, case number, or opinion number: 2:02-cr-00034-1, 02:03-cr-00007

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):
revocation & sentencing over statutory maximum, serving a sentence and conviction due to fundamental defect sentencing errors, as well as undermined convictions of a prior conviction (possession) 1998 that did not qualify to enhance sentence.

(d) Date of the decision or action: 10-30-03, 10-16-20

Your Earlier Challenges of the Decision or Action7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: 6th District federal Court

(2) Date of filing: 10-30-03

(3) Docket number, case number, or opinion number: 2:02-cr-00034, 2:03-cr-00007

(4) Result: Denied

(5) Date of result: 11-18-04

(6) Issues raised: ineffectiveness of counsel, voluntariness of accepting the plea, failure to have psychological evaluation.
(Direct APPEAL)

(b) If you answered "No," explain why you did not appeal: _____

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: 6th District COURT OF APPEALS
COURT

(2) Date of filing:

(3) Docket number, case number, or opinion number: "0738", 2:03-cr-00607

(4) Result: Denied

(5) Date of result: 01-8-09

(6) Issues raised: (2255) ineffectiveness of counsel, Prior enhancement for state, "Simple Possession" charge was not considered a felony under the Controlled sentencing act, because it was considered a misdemeanor under federal rules, and not qualifying as a § 851 enhancement. (COA)

(b) If you answered "No," explain why you did not file a second appeal:

9.

Third appeal

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal:

Filed a claim for ineffective assistance of counsel under new claim that wasn't available at the time of appeals and awaited decision from the court. 2013 6th Dist To revisit Motion under 28 U.S.C. § 2255

10.

In this petition, are you challenging the validity of your conviction or sentence as imposed?

Yes No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

Yes No
NP

If "Yes," provide:

(1) Name of court: 6th District APPEALS COURT
 (2) Case number: 02:02-CR-00034-1, 02:03-CR-00007
 (3) Date of filing: 05-23-05
 (4) Result: Denied Claims
 (5) Date of result: 08-18-06
 (6) Issues raised: Failure by Counsel to have psychological testing accepting a plea intelligently, ineffectiveness of Appeal attorney for abandoning claims made by previous attorney and illegal sentence.

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

Yes No

If "Yes," provide:

(1) Name of court: 6th Cir of Appeals (COA)
 (2) Case number: 2:03-cr-00007, "0738"
 (3) Date of filing:
 (4) Result: Denied, stated used immigration case, not applicable
 (5) Date of result: Jan 08 2009
 (6) Issues raised: Lopez v. Gonzalez, misdemeanor in federal Court but felony in state, but doesn't trigger § 851 enhancement because it's not considered a felony under Control Substance Act. Amended Claim that was denied due to time barred, but entered as COA request.

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: At time of conviction settled law of this court or Supreme Court established the legality of the conviction, subsequent to prisoner's direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and the prisoner cannot satisfy the gate keeping provisions of § 2255 because the new rule is not one of constitutional law.

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

Yes No

If "Yes," provide:

(a) Date you were taken into immigration custody: _____
 (b) Date of the removal or reinstatement order: _____
 (c) Did you file an appeal with the Board of Immigration Appeals? _____

Yes No

If "Yes," provide:

(1) Date of filing: _____

(2) Case number: _____

(3) Result: *Denied R.H.*

(4) Date of result: *1/18*

(5) Issues raised: *Failure by counsel to have psychological testing, due to mental disabilities*
**failure by appeal attorney to challenge prior counsels recommendations of illegal*
**Sentencing*

(d) Did you appeal the decision to the United States Court of Appeals?

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Date of filing: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12. Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

Yes No

If "Yes," provide:

(a) Kind of petition, motion, or application: *3582(c)(2)*

(b) Name of the authority, agency, or court: *6th District federal Court, Southern District of OHIO*

(c) Date of filing: *08-28-2008*

(d) Docket number, case number, or opinion number: *2:02-cr-00034-1, 2:03-cr-00007*

(e) Result: *Denied*

(f) Date of result: *January 08, 2009*

(g) Issues raised: *That prior 1998 conviction of possession of cocaine state conviction didn't constitute as felony to trigger enhancement of 851 mandatory minimum sentence, under the Controlled Sentencing Act. Reduction of sentence due to new "booker" Supreme Court case.*

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: The 1998 Michigan Conviction didn't exceed one year; the maximum punishment that could receive was 6-10 Months^{MAX}. And that petitioner can satisfy the savings clause of Section 2255(e); Conviction did not qualify to enhance sentence. (see a) Supp. facts.) (in effective counsel)

(a) Supporting facts (Be brief. Do not cite cases or law.):

Counsel was ineffective for, inter alia, failing to argue that conviction did not qualify to enhance his sentence. And allowed an error to proceed uncorrected. An being held pursuant to the erroneous application or interpretation of relevant law. And the Government was precluded from establishing that the conviction was for a qualifying offense under the Controlled Substance Act.

(b) Did you present Ground One in all appeals that were available to you?

Yes

No

21 U.S.C. 841(b)(1)(B)

GROUND TWO: Actual innocent of § 851 enhancement, due to materially untrue assumptions concerning his criminal record, which caused a fundamental defect, by increase in congressionally mandated sentencing floors. Based on illegal enhancement. 1998 Mich. Possession of cocaine conviction.

(a) Supporting facts (Be brief. Do not cite cases or law.):

Hunter had a "substantial and legitimate expectation that he would be deprived of his liberty only to the extent determined by the [sentencing body] in the exercise of its statutory discretion." "erroneously-imposed sentencing floor is problematic. Which deprived him of his due process rights, and grave error. And is Not Considered a felony drug offense for conviction or detention.

(b) Did you present Ground Two in all appeals that were available to you?

Yes

No

GROUND THREE: Revocation, is connected to original case and due to this new retroactive change, the sentence now presents an error sufficiently grave to be deemed fundamental defect cause by the increased mandatory minimum of a illegal sentence, and increasement of supervised release over maximum punishment.

(a) Supporting facts (Be brief. Do not cite cases or law.):

When Appellant never should have been subjected to an increase in first place error is grave. Without "98" conviction Appellant's statutory minimum would have been five years - half of sentence to which he was subjected and subject to, "Now" newly guidelines, "No" Mandatory minimum. His sentence WAS pre-booker. An unable to recieve enhanced revocation time. (30months)

(b) Did you present Ground Three in all appeals that were available to you?

Yes

No

GROUND FOUR: § 2255 is inadequate and ineffective to test the legality of detention & a conviction when his sentence was pre-booker, and (see supp. facts) 28 U.S.C., 2255(e). The savings clause, provides that an individual may seek relief from an illegal detention by way of a traditional 28 U.S.C. 2241 habeas corpus petition.

(a) Supporting facts (Be brief. Do not cite cases or law.):

(1) At the time of conviction settled law of this circuit or circuit of conviction or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3) the prisoner cannot satisfy the gate keeping provisions of § 2255 because the new rule is not one of constitutional law.

(b) Did you present Ground Four in all appeals that were available to you?

Yes

No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: ineffectiveness of counsel, that was not deemed ineffective until later to be "erroneous application or interpretation of relevant law," by the Supreme Court after all appeals had been filed and subsequent to all filings. Attorneys advising client to turn down plea, insisting no other consequences would happen, failure to advice of consequences of rejecting plea and getting approx 10 extra years.
Request for Relief

15. State exactly what you want the court to do: vacate and remanded sentences and undermined convictions allowing Appellant to pass through the savings clause portal and have the § 2241 petition addressed on the merits.
"Not limited to correct or set aside his sentences."

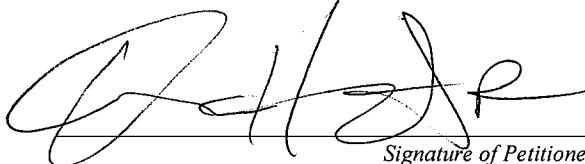
Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

12-11/21



Signature of Petitioner

Signature of Attorney or other authorized person, if any

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**Instructions**

1. **Who Should Use This Form.** You should use this form if
 - you are a federal prisoner and you wish to challenge the way your sentence is being carried out (*for example, you claim that the Bureau of Prisons miscalculated your sentence or failed to properly award good time credits*);
 - you are in federal or state custody because of something other than a judgment of conviction (*for example, you are in pretrial detention or are awaiting extradition*); or
 - you are alleging that you are illegally detained in immigration custody.
2. **Who Should Not Use This Form.** You should not use this form if
 - you are challenging the validity of a federal judgment of conviction and sentence (*these challenges are generally raised in a motion under 28 U.S.C. § 2255*);
 - you are challenging the validity of a state judgment of conviction and sentence (*these challenges are generally raised in a petition under 28 U.S.C. § 2254*); or
 - you are challenging a final order of removal in an immigration case (*these challenges are generally raised in a petition for review directly with a United States Court of Appeals*).
3. **Preparing the Petition.** The petition must be typed or neatly written, and you must sign and date it under penalty of perjury. **A false statement may lead to prosecution.**
4. **Answer all the questions.** You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit any legal arguments, you must submit them in a separate memorandum. Be aware that any such memorandum may be subject to page limits set forth in the local rules of the court where you file this petition. If you attach additional pages, number the pages and identify which section of the petition is being continued. All filings must be submitted on paper sized 8½ by 11 inches. **Do not use the back of any page.**
5. **Supporting Documents.** In addition to your petition, you must send to the court a copy of the decisions you are challenging and a copy of any briefs or administrative remedy forms filed in your case.
6. **Required Filing Fee.** You must include the \$5 filing fee required by 28 U.S.C. § 1914(a). If you are unable to pay the filing fee, you must ask the court for permission to proceed in forma pauperis – that is, as a person who cannot pay the filing fee – by submitting the documents that the court requires.
7. **Submitting Documents to the Court.** Mail your petition and _____ copies to the clerk of the United States District Court for the district and division in which you are confined. For a list of districts and divisions, see 28 U.S.C. §§ 81-131. All copies must be identical to the original. Copies may be legibly handwritten.
If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.
8. **Change of Address.** You must immediately notify the court in writing of any change of address. If you do not, the court may dismiss your case.